

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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|------------------------------|---|------------------------|
| EMSAT ADVANCED GEO-LOCATION |) | CASE NO. 4:08-CV-00822 |
| TECHNOLOGY, LLC AND LOCATION |) | |
| BASED SERVICES LLC, |) | JUDGE JOHN R. ADAMS |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | |
| AT&T MOBILITY LLC f/k/a |) | |
| CINGULAR WIRELESS LLC, |) | |
| |) | |
| Defendant. |) | |

**PLAINTIFFS' MOTION FOR LEAVE TO FILE
SURREPLY IN OPPOSITION TO
DEFENDANT AT&T MOBILITY LLC'S
MOTION FOR SUMMARY JUDGMENT**

Plaintiffs Advanced Geolocation Technology LLC and Location Based Services LLC respectfully move this Court for leave to file a surreply brief in opposition to Defendant AT&T Mobility LLC's Motion for Summary Judgment. As set forth in detail in Plaintiffs' proposed Surreply, a copy of which is attached as Exhibit A, Defendant's Reply in support of its motion raises several issues not contained in its original Motion for Summary Judgment. These include:

(A) New factual allegations, with no record support, regarding the subjective intent of the parties, and specifically contending that the parties to the Assignment Agreement intended to dupe downstream licensees into believing that they had been granted an exclusive license.

(B) Misrepresenting the law regarding the scope of a patent infringement claim in order to manufacture an argument that Defendant's infringement of the patents-in-suit is not a

prohibited “use” of those patents under the Assignment Agreement at issue in Defendant’s motion.

(C) Asserting new grounds for summary judgment that take positions inconsistent with those taken in its opening brief.

Because Defendant raised these new issues in its Reply, Plaintiffs have not had an opportunity to respond to them. Thus, in order to fairly consider all of the arguments Defendant has made in support of its Motion for Summary Judgment Plaintiffs should be granted leave to file the Surreply attached as Exhibit A.

Respectfully submitted,

/s/ Michael J. Garvin

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